

REMARKS

Claims 1, 3, 5 – 7, 20 – 23, 26 and 27 are pending in the present application. Applicants respectfully request entry and consideration of the present response, at least for the purposes of appeal. No amendments have been submitted that would require further search.

Claims 1 and 5 have been rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 3,690,321, to Hirschman, hereinafter “Hirschman,” in view of United States Patent No. 3,830,237, to Bernardin et al., hereinafter “Bernardin.” Applicants respectfully traverse this rejection. Claim 1 is independent.

Claim 1 is directed to a fibrous tampon for absorbing body fluids. The tampon comprises, *inter alia*, at least one inner layer having one or more malodor counteractant materials incorporated therein, and at least one outer layer that provides a cross-pad configuration to the fibrous tampon. The one or more malodor counteractant materials is present between about 0.01 grams to about 0.12 grams.

Applicants respectfully submit that the proposed combination of cited art fails to disclose or suggest the claimed inner layer, outer layer, cross-pad configuration, or the claimed range of malodor counteractant materials.

Hirschman is directed to a catamenial device including a tampon for insertion into the vaginal canal. (Abstract) The device includes a tampon portion 11, and a pad portion 12 that extends transversely to an axis of the tampon portion 11. The tampon portion 11 has grooves 14 cut into an end 13 thereof, so that the grooves 14 may carry fluids such as a deodorant. (col. 2, l. 22-39)

Bernardin is directed to a method for incorporating “small but effective” amounts of an odor-counteracting scent into a tampon. The scent is disposed in a pre-formed axial cavity in the base of the tampon. (Abstract)

Neither Hirschman, nor Bernardin, nor the combination of the two, discloses or suggests the fibrous tampon of claim 1. The Office Action first states, on pp. 2-3, that Hirschman teaches a tampon having an inner layer with one or more malodor counteractant materials incorporated therein, and cites grooves 14 of Hirschman as reading on this claimed feature. This is a misinterpretation of Hirschman. Grooves 14 are v-shaped structures formed within an end 13 of tampon 11 (col. 2, l. 34-36), and are clearly not a layer at all, as required in claim 1. Hirschman, in fact, does not even contemplate a layered structure. The device 10 of Hirschman is made of absorbent material that is “rolled and molded to the desired T-shaped configuration.” (col. 2, l. 26-29) There are no layers in the device of Hirschman, much less the claimed inner and outer layers.

The Office Action further states that Hirschman discloses an outer layer that provides a cross-pad configuration to the tampon, and cites tampon portion 11 and pad portion 12 of Hirschman for support of this assertion. Again, however, this interpretation is mistaken. Tampon portion 11 and pad portion 12 of Hirschman do not represent an outer layer of device 10, but are rather integrally formed with what the Office Action has cited as the claimed inner layer, namely grooves 14. There are no inner and outer layers in the device of Hirschman at all, let alone an outer layer that provides a cross-pad configuration to the tampon, as required in claim 1.

In addition, the Office Action acknowledges that Hirschman fails to teach the amount of malodor counteractant material recited in claim 1. To cure this deficiency, the Office Action looks to Bernardin, and states that Bernardin discloses the amount of malodor counteractant material recited in claim 1.

Bernardin, however, discloses that the tampons contemplated therein can contain between 0.5 to 6 milligrams of perfume oil. The reference discloses that 6 milligrams is the highest acceptable concentration, stating that "as much as 6 milligrams per tampon were used."

Claim 1, by contrast, recites that the claimed fibrous tampon has between about 0.01 grams and about 0.12 grams, which is equivalent to about 10 milligrams to 120 milligrams. Thus, the Office Action has misinterpreted Bernardin. The reference only discloses, as much as 6 milligrams, where claim 1 recites, at a minimum, about 0.01 grams (10 milligrams). Therefore, Bernardin fails to disclose or suggest the amount of malodor counteractant material recited in claim 1.

Furthermore, in order for two or more references to defeat the patentability of a claim, there must be a reason why one skilled in the art would, at the time of the invention, combine the teachings of those references. KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1740-41 (2007). It is not enough to show only that the elements of the claim were known in the art. Id. at 1741. In addition, as stated in MPEP §2143.01(VI), the proposed modification of a primary reference with additional references can not "change the principle of operation of a reference." If it does, then the "teachings of the references are not sufficient to render the claims *prima facie* obvious."

The Office Action has failed to provide any reason why one of ordinary skill in the art would combine the teachings of Hirschman and Bernardin. To modify Hirschman with Bernardin in the way proposed by the Office Action would clearly change the principle of operation of the former, contrary to the guidelines of the MPEP. As previously discussed, in Hirschman, the deodorant is disposed in a groove 14 that is formed in an end of a tampon portion. In Bernardin, by contrast, the perfume is placed in a pre-formed cavity at the base of the tampon, and is held in place with a stick. The device of Hirschman is inserted into the

user's vagina with grooves 14 at a front end, whereas the pre-formed cavity of Bernardin that contains the perfume oil is at a rear end of the tampon as it is inserted. The two references therefore use completely different methods of delivering the deodorant and perfume oil, and the combination of the two is impermissible under KSR and the MPEP.

Claim 1 is therefore patentable under 35 U.S.C. §103(a) over Hirschman in view of Bernardin. Claim 5 depends from claim 1, and is also patentable over this combination for at least the reasons provided above in support of the patentability of claim 1. Applicants respectfully submit that the rejection of claims 1 and 5 under 35 U.S.C. §103(a) as being unpatentable over Hirschman in view of Bernardin has been overcome, and request that it be withdrawn.

Claims 3, 6, 7, 20-23, 26, and 27 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hirschman in view of Bernardin, in further view of United States Patent No. 5,417,224, to Petrus et al., hereinafter "Petrus." Applicants respectfully traverse this rejection. Claims 6, 20, 26, and 27 are independent.

Claim 3 depends from claim 1, and further recites that the one or more malodor counteractant materials is glycerin.

Petrus is directed to a tampon having one or more loops placed entirely through the tampon for ease of insertion and removal. (Abstract) The tampon 10 comprises a spherical member 12 having a "polymeric sponge-like structure." (col. 5, l. 20-23) In one embodiment, the tampon can have a lubricant such as glycerin. (col. 6, l. 41)

Petrus fails to cure the deficiency of Hirschman and Bernardin to disclose the fibrous of tampon of claim 1, as discussed above, and also fails to cure the impermissibility of the combination of these two references. Petrus is merely

relied on to teach glycerin in a tampon, and fails to disclose or suggest at least one inner layer having one or more malodor counteractant materials incorporated therein, and at least one outer layer that provides a cross-pad configuration to the fibrous tampon, as required in claim 1. Petrus discloses a spherical foam tampon, and clearly does not contemplate an inner layer and outer layer, as required in claim 1. Petrus also fails to disclose or suggest the amount of glycerin recited in claim 1. Therefore, for at least the reasons provided above with respect to claim 1, claim 3 is patentable over Hirschman, in view of Bernardin, in further view of Petrus.

Independent claim 6 is directed to a fibrous tampon for absorbing body fluids. The tampon comprises at least one inner layer having liquid glycerin incorporated therein, and at least one outer layer that provides a cross-pad configuration to the fibrous tampon. The liquid glycerin is present between about 0.01 grams to about 0.05 grams.

As previously discussed, the cited combination of Hirschman, Bernardin, and Petrus fails to disclose or suggest the claimed at least one inner layer, the at least one outer layer, or the claimed cross-pad configuration. The combination also fails to disclose or suggest liquid glycerin in the claimed amount. Claim 6 is therefore patentable over Hirschman in view of Bernardin in further view of Petrus, as is claim 7, which depends therefrom.

Independent claim 20 recites a fibrous tampon for absorbing body fluids. The fibrous tampon comprises a fibrous article having at least one inner layer and at least one outer layer suitable for absorbing the body fluids. The fibrous tampon further comprises a liquid glycerin that does not support microbial growth, disposed continuously along a longitudinal extent of the at least one inner layer, to absorb odors associated with the body fluids.

As previously discussed, the combination of Hirschman, Bernardin, and Petrus fails to disclose or suggest the claimed inner layer and outer layer. Therefore, the combination also clearly fails to disclose or suggest a liquid glycerin disposed continuously along a longitudinal extent of at least one inner layer, as required by claim 20. Claim 20 also requires that liquid glycerin be present between about 0.01 grams to about 0.12 grams. As previously discussed, this feature is completely absent from the cited combination of references. Claim 20 is therefore patentable over Hirschman, Bernardin, and Petrus, as are claims 21-23, which depend therefrom.

Independent claim 26 recites a method of deodorizing a vaginal area. The method comprises applying to the vaginal area a multi-layered fibrous absorbent article having a malodor counteractant material. The multi-layered fibrous absorbent article comprises, *inter alia*, an inner layer and an outer layer. Glycerin and at least one additional malodor counteractant material are incorporated within the multi-layered fibrous absorbent article between the inner and outer layer.

As previously discussed, the cited combination of Hirschman, Bernardin, and Petrus fails to disclose or suggest a multi-layered fibrous absorbent article having an inner layer and an outer layer, as required by claim 26. Therefore, the cited combination clearly fails to disclose or suggest a liquid glycerin and at least one additional malodor counteractant material incorporated within the multi-layered fibrous absorbent article between an inner layer and an outer layer, as required by claim 26. Claim 26 is therefore patentable over Hirschman in view of Bernardin, in further view of Petrus.

Independent claim 27 recites a method of deodorizing a vaginal area. The method comprises the step of applying a fibrous absorbent article to the vaginal area. The fibrous article comprises, *inter alia*, glycerin in an amount of about

0.01 grams to about 0.05 grams. The fibrous article further comprises at least one inner layer and at least one outer layer.

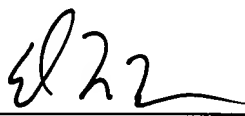
As previously discussed, the cited combination of Hirschman, Bernardin, fails to disclose or suggest the claimed about of glycerin recited in claim 27. The combination also fails to disclose a fibrous article having at least one inner layer and at least one outer layer, as required by claim 27. Claim 27 is therefore patentable over Hirschman in view of Bernardin, in further view of Petrus.

Applicants respectfully submit that the rejection of claims 3, 6, 7, 20-23, 26, and 27 under 35 U.S.C. §103(a) as being unpatentable over Hirschman in view of Bernardin, in further view of Petrus, has been overcome, and respectfully request that it be withdrawn.

In view of the foregoing, Applicants submit that all claims present in this application patentably distinguish over each reference and the cited combination of references. Accordingly, Applicants respectfully request that this application be passed to allowance.

Respectfully submitted,

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